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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948

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No. 207

WELTON LADNER AND LANDER NECAISE, *Petitioners*

v.

UNITED STATES OF AMERICA

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the Court of Appeals (R. 231-233) is reported at 168 F. 2d 771.

### JURISDICTION

The judgment of the Court of Appeals was entered June 10, 1948 (R. 234), and a petition for rehearing was denied July 16, 1948 (R. 244). The petition for a writ of certiorari was filed August 9,

1948. The jurisdiction of this Court was invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, now 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

## QUESTIONS PRESENTED

The principal questions presented are:

1. Whether the indictment states an offense under the Anti-Racketeering Act.

2. Whether any portion of the alleged offense was committed within the jurisdiction of the District Court for the Eastern District of Louisiana.

3. Whether the evidence is sufficient to support petitioner's conviction of conspiracy under the Anti-Racketeering Act.

4. Whether petitioners were entitled to a bill of particulars.

## STATUTE INVOLVED

The Act of June 18, 1934, c. 569, 48 Stat. 979 (18 U. S. C., 1940 ed., 420a to 420e), commonly known as the Anti-Racketeering Act, provided in pertinent part:[1]

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[1] In 1946, subsequent to the offenses alleged to have been committed by petitioners, and following the decision of this Court in *United States* v. *Local 807*, 315 U. S. 521, the Act was clarified in certain respects and was amended by eliminating the exceptions applicable to labor. For the present text under the recent recodification of the Criminal Code, see 18 U. S. C. 1951.

* * * the term "trade or commerce," as used herein, is defined to mean trade or commerce between any States, * * * .

Sec. 2. Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or

(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

* * * * *

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both.

Sec. 3. (a) As used in this Act the term "wrongful" means in violation of the criminal laws of the United States or of any State or Territory.

* * * * *

Sec. 6. Any person charged with violating this Act may be prosecuted in any district in which any part of the offense has been com-

mitted by him or by his actual associates participating with him in the offense or by his fellow conspirators: * * * .

**STATEMENT**

Petitioners were indicted in the District Court for the Eastern District of Louisiana in a single count charging them with conspiracy in violation of the provisions of the Anti-Racketeering Act. It was alleged that petitioners were officials of Hancock County, Mississippi, and that, between January 1, 1944, and December 1, 1944, they conspired to coerce payments of money from the owners and operators of trucks travelling across Hancock County in interstate commerce. The offense was stated to have taken place both in Mississippi and in Louisiana. The scheme charged was that petitioners would, under the guise of enforcing the laws of Mississippi, arrest and detain the drivers of interstate trucks for alleged violations of state laws, and that they would not file or press charges against the drivers, but would inform the owners and operators that if they would pay certain sums of money to petitioners and make arrangements for future payments, the charges would be dropped and they would thereafter have the privilege of operating in and through Hancock County without molestation. (R. 2-6.) After a jury trial, petitioners were convicted (R. 28) and sentenced to imprisonment for one year (R. 193, 195-197). The judgment was affirmed on appeal (R. 234).

The evidence for the Government may be summarized as follows:

Petitioner Ladner was a deputy sheriff and petitioner Necaise a member of the Board of Supervisors of Hancock County, Mississippi (R. 47).

Harvey West operated a fleet of trucks between New Orleans, Louisiana, and Mobile, Alabama, passing through Hancock County, Mississippi, enroute (R. 54). On the night of October 23, 1944, four of West's trucks were stopped in Mississippi by an officer who told the drivers that the trucks were overloaded; the officer had another man with him. After the trucks were stopped the officer and one of the drivers went off to call West; the drivers were given traffic violation tickets signed by Ladner (R. 85-90). West testified that someone who said he represented the deputy sheriff called him at 11 o'clock that night, told him that some of his trucks were tied up near Picayune, Mississippi, and asked him to come to the place where the trucks were held (R. 55-56). West replied that it was impossible to do so that night, but he agreed to a meeting at the same place at 11 o'clock the next night (R. 56-57). When West and his assistant manager, Davis, arrived at the appointed place the next night they found petitioners Ladner and Necaise (R. 59, 72). West asked what they wanted. Ladner and Necaise asked $300 to settle the tickets which had been given the drivers the night before. After some haggling West paid $150 to be split

between Ladner and Necaise, and agreed to pay $150 more in two weeks and $75 a month to each of the officials thereafter "to be protected," that is, so as "not to have our drivers stopped or interfered with." (R. 59-61, 64, 67, 72-74.) Ladner told them that they had "to get right or he would stop them every time they came through there, and hold them" for "whatever violation" (R. 84). Ladner also asked them to have Stephens, another truck operator, come to see him "to get straight" (R. 74). West never received a summons to appear in court on the four tickets (R. 61, 89).

John B. Herrin, who also operated trucks through Mississippi enroute between New Orleans and Mobile, sold the business to Kirke Couch in June 1944 (R. 90-91, 99). At the time of the sale, Herrin had on hand a number of tickets which had been given to his drivers for violations of Mississippi traffic laws (R. 91, 92, 99). Several of these tickets had been given to the drivers by Ladner (R. 105-106, 111). Herrin and Couch went to see the sheriff of Hancock County, Mississippi, to see what could be done about the tickets (R. 92, 95, 96, 99; cf. R. 156). They were told by the sheriff to see Necaise (R. 95, 96, 99). They found and talked to Necaise in Louisiana just across the state line from Mississippi (R. 91-92, 100). Ladner was with Necaise, though he took no part in the conversation (R. 100, 103; cf. 135, 143). Necaise asked for $800 to settle the tickets and allow the Herrin

trucks to pass through Hancock County unmolested in the future (R. 92-93, 94, 96).

**ARGUMENT**

1. Petitioners contend that the indictment failed to state an offense since it charged them with a violation of the "Act of Congress of January 18, 1934," whereas the Anti-Racketeering Act was enacted on June 18, 1934 (Pet. 6, 8, 10, 14). But petitioners were certainly not misled by this error in specifying the date of enactment, for the statute was referred to in the indictment both by its formal and popular titles (R. 3). Under Rule 7(c) of the Federal Rules of Criminal Procedure, such an unprejudicial error is not a ground for reversal.[2] See also *United States* v. *Hutcheson,* 312 U. S. 219, 229; *Williams* v. *United States,* 168 U. S. 382, 389.

Petitioners also contend that the indictment was faulty in that it failed to allege any overt act in furtherance of the conspiracy (Pet. 3, 6, 9). Although the general conspiracy section of the Criminal Code[3] requires the commission of an overt act, the conspiracy section of the Anti-Racketeering

[2] "* * * The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice."

[3] Section 37 of the Criminal Code, now 18 U. S. C. 371.

Act punishes the crime "on the common law footing" without requiring allegation or proof of an overt act. Cf. *Singer* v. *United States*, 323 U. S. 338, 340.

2. Petitioners urge that the district court in Louisiana had no jurisdiction because they were charged with using their position as officers of a county in Mississippi to commit a crime in Mississippi (Pet. 2-3, 6, 11, 12, 17). There was abundant evidence of acts by petitioners in Mississippi from which the existence of a conspiracy could be inferred. But it was in Louisiana that Necaise demanded $800 to settle the traffic tickets, many of which had been given to Herrin's drivers by Ladner who was with Necaise at the time, and to insure Herrin against future molestation in Mississippi. This was obviously an overt act in furtherance of the conspiracy, and it is settled that a prosecution for conspiracy may properly be maintained in any federal district where an overt act is committed. *Hyde* v. *United States*, 225 U. S. 347, 356-367; *Davis* v. *United States*, 148 F. 2d 203 (C. C. A. 5), certiorari denied, 325 U. S. 888. In addition, Section 6 of the Anti-Racketeering Act, as it stood at that time, specifically authorized prosecution in any district in which any part of the offense had been committed by a co-conspirator (*supra*, pp. 3-4).

3. Petitioners seem to contend that the substantive crime proscribed by the act and alleged in the indictment to have been the object of the conspir-

acy was extortion, but that the proof established no conspiracy and no substantive offense other than separate acts of bribery and attempts at bribery (Pet. 15-17).

So far as the existence of a conspiracy is concerned, we think it was clearly established by sufficient evidence. We also think it clear that the object of the conspiracy was, not bribery, but extortion. It is true that one of the purposes of the act was to punish extortion [4] by organized groups preying upon interstate commerce. *United States* v. *Local 807*, 315 U. S. 521, 528-530; *Nick* v. *United States*, 122 F. 2d 660, 671 (C. C. A. 8), certiorari denied, 314 U. S. 687; *United States* v. *McGlone*, 19 F. Supp. 285, 287-288 (E. D. Pa.). There can be no doubt, we submit, that the conspiracy concocted by petitioners was to commit acts which come within the fair meaning of the prohibitions of the statute. For as the indictment alleged and the proof showed, petitioners used their official positions to coerce the payment of money in return for allowing the trucks of their victims to pass through territory within their jurisdiction without being molested on charges of violating the local laws.

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[4] Section 2(b) of the Act (*supra*, p. 3) adopted in substance the definition of extortion established by statute in New York (Penal Law, § 850), California (Penal Code, § 518), Oklahoma (21 Okla. St. Ann. § 1481) and several other states. See also Vol. 1, Hearings of Senate Subcommittee of Committee on Commerce on S. Res. 74, 73rd Cong., 2nd Sess., p. 8; and cf. 91 Cong. Rec. 11843, 11900.

The distinction between extortion and bribery, in respect of one in an official position, seems to be that whereas the former involves a demand accompanied by some threatened use of official position, the latter connotes a mere asking or receiving of a present in return for a favorable exercise of the powers of office. Thus in *Daniels* v. *United States,* 17 F. 2d 339, 342-343 (C. C. A. 9), certiorari denied, 274 U. S. 744, the court adopted the following statement from a North Carolina decision: "The distinction between bribery and extortion seems to be that the former offense consists in offering a present or receiving one, the latter in demanding a fee or present by color of office." In the *Daniels* case, the offense was held to be bribery since the prohibition officer involved had made no demands or threats, but had simply accepted what was offered. So in *Williams* v. *United States,* 168 U. S. 382, this Court upheld the conviction of an immigration official for extortion, the evidence being that he had demanded $100 upon a threat to exclude a certain Chinese. In *Nick* v. *United States, supra,* and in *United States* v. *Compagna,* 146 F. 2d 524 (C. C. A. 2), certiorari denied, 324 U. S. 867, union officials were convicted of extortion under the Anti-Racketeering Act; the evidence showed that they had made demands for money upon employers accompanied by threats to call strikes. In *State* v. *Barts,* 132 N. J. L. 74, a police officer was convicted of extortion upon evidence that he had

demanded money from a girl, whom he knew to have been involved in a theft, and had threatened to arrest her. And in *People* v. *Sheridan,* 174 N. Y. S. 327, an elevator inspector was convicted of extortion for threatening to stop the running of an elevator unless paid a certain sum. Cf. *United States* v. *Sutter,* 160 F. 2d 754 (C. C. A. 7). So also in the present case petitioners threatened to use their official positions to stop the interstate trucks "every time they came through" Hancock County if the operators did not "get right".

4. Finally, petitioners contend that they were deprived of effective assistance of counsel by the trial court's denial of a motion for a bill of particulars (R. 11-16), because the indictment was so vague that counsel could not adequately prepare a defense (Pet. 3, 5-6, 7, 8, 11, 17-19). Such a motion is, of course, addressed to the sound discretion of the trial court and its action will not be disturbed in the absence of abuse. *Wong Tai* v. *United States,* 273 U. S. 77, 82. Petitioners point to nothing in the record of the trial even tending to show that they were surprised or prejudiced as a result of the denial of the motion. The indictment clearly stated the time and the place of the conspiracy and the means by which it was to be carried to fruition. It was unnecessary to set out in detail the elements of the substantive offenses which were the objects of the conspiracy. *Wong Tai* v. *United States, supra,* at 81.

## CONCLUSION

The decision of the circuit court of appeals is correct and no conflict of decisions is involved. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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